

Appl. No. 10/755,639  
Response Dated August 3, 2006  
Reply to Office Action of July 3, 2006

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### REMARKS/ARGUMENTS

Claims 1-74 are pending in the present application before the amendment as set forth above.

In the July 3, 2006 Office Communication, the Primary Examiner stated that:

"[t]his application contains claims directed to more than one species of the generic invention. *These species are deemed to lack unity of invention because they are not so linked as to from a single general inventive concept under PCT Rule 13.1.*

The species are as follows:

Applicant claim 6 distinct species of the same device (marked by independent claims 1, 12, 31, 43, 61 & 7[3]) [each] containing inventive elements separating them from each other." (Emphasis added.)

The Primary Examiner also stated that "Applicant must elect a specific device and is entitled to have a method of use thereof examined in conjunction with that election."

Applicants through their attorney on the record and identified below appreciate very much the Primary Examiner's preliminary review of the instant application.

Applicants submit that the instant application is a national phase application entered from International Application No. PCT/US02/24911, which has been deemed by the Authorized Officer as having unity of invention and all claims 1-74 meeting the criteria set out in PCT Article 33(2)-(3). A copy of the corresponding IPR is attached hereto. *Applicants thus respectfully submit that the lack of unity of invention under PCT Rule 13.1 rejection be withdrawn and all claims 1-74 be examined together.*

Alternatively, without acquiescing to the statements made therein, Applicants hereby elect with traverse the claims of Species I, claims 1-11, corresponding to a device for monitoring status of at least one cell, for prosecution in the instant application. Applicants further respectfully request at least the claims of Species II, claims 12-24 be examined together with claims 1-11.

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Claims 1-11 of Species I recite a device for monitoring status of *at least one cell*. Claims 12-24 of Species II recite a device for monitoring status of a *plurality of cells*. Applicants respectfully submit that device claims 1-11, as written, require at least one sensor, which can be one or more sensors; whereas device claims 12-24, as written, require a plurality of sensors. Thus, the two sets of claims overlap in scope, and possess unity of invention.

Accordingly, Applicants believe that claims 1-11 of Species I, and claims 12-24 of Species II are not directed to patentably distinct species inventions as the Primary Examiner asserted and *searching the device claims 1-11 of Species I with the linkable device claims 12-24 of Species II does not impose a serious burden on the Office*. Therefore, Applicants respectfully request claims 12-24 of Species II be entered and examined with elected claims 1-11 together.


Examination on the merits is therefore respectfully requested and this Application is believed to be in condition for allowance, and such action is earnestly solicited.

If the Primary Examiner has any questions concerning this Response or the Application in general, the Primary Examiner is requested to contact the undersigned at 404-495-3678.

Respectfully submitted,

MORRIS, MANNING & MARTIN, LLP

August 3, 2006

  
\_\_\_\_\_  
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## PATENT COOPERATION TREATY

**COPY**From the  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITYTo:  
STEVEN C. BRUESS  
MERCHANT & GOULD P.C.  
P. O. BOX 2903  
MINNEAPOLIS, MN 55402-0903**PCT**NOTIFICATION OF TRANSMITTAL OF  
INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT

(PCT Rule 71.1)

Date of Mailing  
(day/month/year) **10 OCT 2003**

Applicant's or agent's file reference

60063.8WOU1

**IMPORTANT NOTIFICATION**

International application No.

PCT/US02/24911

International filing date (day/month/year)

06 August 2002 (06.08.2002)

Priority date (day/month/year)

06 August 2001 (06.08.2001)

Applicant

VANDERBILT UNIVERSITY

1. The applicant is hereby notified that this International Preliminary Examining Authority transmits herewith the international preliminary examination report and its annexes, if any, established on the international application.
2. A copy of the report and its annexes, if any, is being transmitted to the International Bureau for communication to all the elected Offices.
3. Where required by any of the elected Offices, the International Bureau will prepare an English translation of the report (but not of any annexes) and will transmit such translation to those Offices.
4. **REMINDER**

The applicant must enter the national phase before each elected Office by performing certain acts (filing translations and paying national fees) within 30 months from the priority date (or later in some Offices) (Article 39(1)) (see also the reminder sent by the International Bureau with Form PCT/IB/301).

Where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report. It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned.

For further details on the applicable time limits and requirements of the elected Offices, see Volume II of the PCT Applicant's Guide.

Name and mailing address of the IPEA/US

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703)305-3230

Form PCT/IPEA/416 (July 1992)

Authorized officer

L. Elaine Lankford

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## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US02/24911

## V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

## 1. STATEMENT

Novelty (N)	Claims <u>1-74</u>	YES
	Claims <u>NONE</u>	NO
Inventive Step (IS)	Claims <u>1-74</u>	YES
	Claims <u>NONE</u>	NO
Industrial Applicability (IA)	Claims <u>1-74</u>	YES
	Claims <u>NONE</u>	NO

## 2. CITATIONS AND EXPLANATIONS

Claims 1-74 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed device.

Form PCT/IPEA/409 (Box V) (July 1998)

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US02/24911

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☒ the international application as originally filed.
- ☒ the description:  
pages 1-90 as originally filed  
pages NONE filed with the demand  
pages NONE filed with the letter of \_\_\_\_\_
- ☒ the claims:  
pages 91-103 as originally filed  
pages NONE as amended (together with any statement) under Article 19  
pages NONE filed with the demand  
pages NONE filed with the letter of \_\_\_\_\_
- ☒ the drawings:  
pages 1-41 as originally filed  
pages NONE filed with the demand  
pages NONE filed with the letter of \_\_\_\_\_
- ☐ the sequence listing part of the description:  
pages NONE as originally filed  
pages NONE filed with the demand  
pages NONE filed with the letter of \_\_\_\_\_

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☐ the claims, Nos. NONE
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

Form PCT/IPEA/409 (Box I) (July 1998)

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.  
PCT/US02/24911**V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. STATEMENT**

Novelty (N)	Claims 1-74	YES
	Claims NONE	NO
Inventive Step (IS)	Claims 1-74	YES
	Claims NONE	NO
Industrial Applicability (IA)	Claims 1-74	YES
	Claims NONE	NO

**2. CITATIONS AND EXPLANATIONS**

Claims 1-74 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed device.

Form PCT/IPEA/409 (Box V) (July 1998)